

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Blue Compass RV LLC,

10 Plaintiff,

11 v.

12 Michael McFadden, et al.,

13 Defendants.
14

No. CV-24-03704-PHX-SHD

ORDER

15 Pending before the Court is Plaintiff Blue Compass RV LLC's ("Blue Compass")
16 Renewed Application for Preliminary Injunction, (Doc. 70). Defendant Michael
17 McFadden has responded, (Doc. 85), and Blue Compass has replied, (Doc. 89). For the
18 reasons stated below, the application will be denied.¹

19 **I. BACKGROUND**

20 The parties are familiar with the underlying facts, which are outlined in the January
21 16, 2025 order denying Blue Compass's first application for a temporary restraining order
22 and preliminary injunction. (*See* Doc. 22.) Blue Compass is an RV retail company, which
23 has locations across the United States, including six in Arizona and one in New Mexico.²
24 (Doc. 1 at ¶ 19.) While primarily engaged in the sale and servicing of RVs, Blue

25
26 ¹ The parties did not request oral argument, and the Court does not believe oral
argument is necessary. *See* LRCiv 7.2(f).

27 ² Some of these facts are drawn from the complaint. The complaint is not verified,
28 and its factual assertions are inadmissible. But the Court may consider inadmissible
evidence to resolve a preliminary injunction. *Flathead-Lolo-Bitterroot Citizen Task Force*
v. Montana, 98 F.4th 1180, 1189 (9th Cir. 2024).

1 Compass's Arizona and New Mexico locations also sell "new and used camper shells, truck
2 bed covers, and truck caps," which Blue Compass refers to collectively as "camper shells."
3 (*Id.* at ¶ 10.)

4 In April 2024, Blue Compass hired McFadden as its "Market Vice President" for
5 the southwest region. (*Id.* at ¶ 15.) McFadden signed an employment agreement which
6 included three provisions relevant here. (*Id.* at ¶ 24.)

7 The "non-competition provision," prohibited McFadden from competing with Blue
8 Compass during, or for one year after his employment. Specifically, McFadden is
9 prohibited from "directly or indirectly . . . selling, leasing, designing, manufacturing,
10 advertising, marketing, financing, storing, repairing or servicing . . . any new or used
11 Recreational Vehicles" or engaging "in any additional related or other business that [Blue
12 Compass] or any subsidiary or affiliate of [Blue Compass] engaged in at any time." (Doc.
13 70 at 134.) The agreement defines the scope of Blue Compass's business as "the selling,
14 leasing, advertising, marketing, financing, storing, repairing and servicing of new and used
15 Recreational Vehicles." (*Id.* at 133.) Recreational Vehicles are defined as "all brands and
16 types of motorhomes, towable travel trailers, fifth wheels, toy haulers, pop-up campers,
17 truck campers, tear drop trailers, and any other type of vehicle or trailer sold, leased or
18 serviced by [Blue Compass]." (*Id.*) The non-competition provision is geographically
19 limited to 100 miles within "any dealership or office within the geographic area over which
20 [McFadden] had business responsibilities" or within 75 miles of any Blue Compass
21 dealership." (*Id.* at 134.)

22 The "non-solicitation provision," prohibits McFadden from hiring Blue Compass
23 employees or soliciting its customers during or for two years after his employment.
24 McFadden may not employ any person who was an employee of Blue Compass at any time
25 for the "then-prior six (6) months," nor may he "solicit or induce any customer of [Blue
26 Compass] to patronize any business directly or indirectly in competition with the business
27 conducted by [Blue Compass]" or encourage a "vendor . . . to withdraw, curtail, or cancel"
28 its business with Blue Compass. (*Id.* at 133)

1 Finally, the “confidentiality provision,” requires McFadden keep certain
2 information confidential and return confidential information to Blue Compass within five
3 business days of his termination. (*Id.* at 132.) Confidential information includes all
4 information “of a private, secret, proprietary or confidential nature” concerning Blue
5 Compass and its operations. (*Id.*)

6 While at Blue Compass, McFadden “was a high-ranking employee,” who was
7 “responsible for leading Blue Compass’s Camper Shell expansion initiative.” (Doc. 70 at
8 4.) McFadden “worked directly with Blue Compass’s senior finance leaders to analyze the
9 Monthly Operating Reports and Profit and Loss statements related to Blue Compass’s
10 Camper Shell sales to identify areas for growth and expansion.” (*Id.* at 5.)

11 On November 30, 2024, McFadden resigned from his role at Blue Compass. (*Id.* at
12 12.) When he resigned, McFadden signed a “Separation Agreement,” which reiterated his
13 obligation to return confidential information to Blue Compass. (*Id.* at 7.) Roughly a week
14 later, McFadden became a member and manager of Camper Capital LLC, (“Camper
15 Capital”) which sells truck shells and accessories in Phoenix and Mesa, Arizona. (*Id.* at
16 12.)

17 Camper Capital was formed in Arizona in October 2024 by Michael LeDuc, also a
18 former Blue Compass employee and defendant in this suit. (*Id.*) At the time of formation,
19 LeDuc was the sole member of Camper Capital, and was still working for Blue Compass
20 as a general sales manager for its Mesa, Arizona dealership. (*Id.*) While working for Blue
21 Compass, LeDuc interacted with and developed Blue Compass’s relationships with three
22 leading camper shell manufacturers in Arizona and “was effectively the face of Blue
23 Compass’s Camper Shell business.” (Doc. 1 at ¶ 48.) LeDuc did not sign any employment
24 or separation agreements with Blue Compass, and thus is not subject to the same
25 competition, solicitation, and confidentiality provisions as McFadden. (*See id.* at ¶ 47–
26 51.)

27 After leaving Blue Compass, LeDuc and McFadden launched Camper Capital in the
28 Phoenix area. (Doc. 70 at 13.) Blue Compass alleges that at least some of their preparation

1 to launch Camper Capital occurred while they were still employed by Blue Compass. (*Id.*)
 2 Since it opened, Camper Capital has established relationships with the same three camper
 3 shell manufacturers that Blue Compass works with, and, as a result, “offer[s] the same
 4 products from the same manufacturers in the same market as Blue Compass.” (Doc. 70 at
 5 52.) Defendants do not dispute that this fact. (*See* Doc. 22 at 9 (“It is undisputed that Blue
 6 Compass and Camper Capital are both in the camper shell business.”); *see generally* Doc.
 7 85.)

8 To promote Camper Capital, LeDuc and McFadden purchased several Google
 9 keywords to direct internet traffic to Camper Capital’s website. (Doc 70 at 17.) Purchased
 10 keywords included “Camperland,” “truck shells,” “topper,” “cap,” “canopy,” “camper
 11 shell,” “bed covers,” “tonneau covers,” “used campershells,” and “campershells near me.”³
 12 (*See* Doc. 70 at 67.)

13 On December 23, 2024, Blue Compass filed this suit, bringing claims against
 14 Defendants for violation of the Defend Trade Secrets Act (“DTSA”), breach of contract,
 15 conspiracy to violate the DTSA, breach of fiduciary duty, and other related claims. (*See*
 16 Doc. 1 at 13–18.) Blue Compass sought a Temporary Restraining Order (“TRO”) and
 17 preliminary injunction on December 27, 2024, which was denied on January 16, 2025.
 18 (Docs. 8, 22.) In denying Blue Compass’s TRO, the Court explained that although Blue
 19 Compass was likely to succeed on at least some of its claims, it failed to demonstrate the
 20 remaining *Winter* factors. (Doc. 22 at 7–14.) Specifically, the Court held that Blue
 21 Compass had not demonstrated that it was likely to be irreparably harmed, or that the
 22 balance of the equities tipped in its favor. (*Id.*)

23 Blue Compass filed its Renewed Application for a Preliminary Injunction on
 24 October 29, 2025. (Doc. 70.) The application is fully briefed. (Docs. 85, 89.)

25
 26
 27 ³ In their Reply, (Doc. 89 at 7), Blue Compass states that LeDuc and McFadden used
 28 the keyword “Blue Compass,” but the referenced deposition testimony does not support
 that statement. (Doc. 70 at 67 (LeDuc testifying that “he didn’t believe” they used the
 words “blue” or “compass”); *id.* at 117 (McFadden listing the purchased keywords, which
 did not include “Blue Compass”).)

II. LEGAL STANDARD

To obtain a preliminary injunction, a plaintiff must show (1) “that he is likely to succeed on the merits,” (2) “that he is likely to suffer irreparable harm in the absence of preliminary relief,” (3) “that the balance of equities tips in his favor, and” (4) “that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Although “a stronger showing of one element may offset a weaker showing of another,” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012), a plaintiff must meet all four requirements to obtain relief, *see DISH Network Corp. v. FCC*, 653 F.3d 771, 776–77 (9th Cir. 2011). Ultimately, a preliminary injunction is “an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Lopez*, 680 F.3d at 1072 (citation modified).

Before reaching the preliminary injunction factors, courts “must assure [themselves] that the constitutional standing requirements are satisfied.” *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007). “Standing must be shown with respect to each form of relief sought, whether it be injunctive relief, damages or civil penalties.” *Id.* The “burden of establishing Article III standing remains at all times with the party invoking federal jurisdiction.” *See Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 655 (9th Cir. 2002).

Each element of standing “must be supported . . . with the manner and degree of evidence required at the successive stages of the litigation.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). This means that, “at the preliminary injunction stage, the plaintiff must make a ‘clear showing’” of standing. *Am. Encore v. Fontes*, 152 F.4th 1097, 1110 (9th Cir. 2024) (cleaned up). This “clear showing” does not, however, depend on the merits of a plaintiff’s claims. *See id.* Thus, in evaluating standing at the preliminary injunction stage, “[courts] ask—accepting the merits of [the plaintiff’s] claims—whether they have made a clear showing that they are likely to satisfy the threshold requirements of standing.” *Id.* at 1111.

1 III. DISCUSSION

2 A. Article III Standing

3 Because Blue Compass seeks injunctive relief, it must “demonstrate a real and
 4 immediate threat of repeated injury in the future.” *Chapman v. Pier 1 Imports (U.S.) Inc.*,
 5 631 F.3d 939, 946 (9th Cir. 2011) (en banc) (quotation marks omitted). A “person exposed
 6 to a risk of future harm may pursue forward-looking, injunctive relief to prevent the harm
 7 from occurring, at least so long as the risk of harm is sufficiently imminent and substantial.”
 8 *TransUnion LLC v. Ramirez*, 594 U.S. 413, 435 (2021). Thus, “[t]o obtain preliminary
 9 injunctive relief, a plaintiff must demonstrate ongoing harm or the present threat of
 10 irreparable injury, not a past injury.” *Wolfe v. Logan*, 2023 WL 2347133, at *3 (C.D. Cal.
 11 2023) (citation omitted). “A preliminary injunction will do nothing to repair alleged past
 12 harms.” *Id.*

13 In its Reply, Blue Compass emphasizes that its application for a preliminary
 14 injunction is “focuse[d] on McFadden’s flagrant breaches of his agreement not to compete
 15 with Blue Compass for 12 months.” (*Id.* at 2 n.1.) McFadden’s employment with Blue
 16 Compass ended on November 30, 2024. (Doc. 1 at ¶ 18.) Pursuant to the parties’ contract,
 17 the non-competition provision terminated one year later, on November 30, 2025. (Doc.
 18 20-1 at 5.) Because the non-competition provision has expired, McFadden can no longer
 19 breach it, and any injury arising from its violation is a past injury for which injunctive relief
 20 is improper. *Cf. VSB Opco, LLC v. Snack Innovations, Inc.*, 2024 WL 4467594, at *6 (C.D.
 21 Cal. 2024) (holding that “given the expiration of the window of enforceability of the non-
 22 compete clause” preliminary relief was “unlikely”). Blue Compass thus lacks standing to
 23 pursue injunctive relief based on McFadden’s violation of the non-competition clause.

24 In its proposed preliminary injunction, Blue Compass also seeks relief based upon
 25 McFadden’s alleged violation of the non-solicitation and confidentiality provisions. (Doc.
 26 70 at 157–60.) Because these provisions have yet to expire, McFadden’s alleged breach is
 27 an ongoing injury, and Blue Compass has standing to seek a preliminary injunction
 28 enforcing them.

B. Preliminary Injunction Factors

1. Likelihood of Success on the Merits

In its January 16 order, the Court found that Blue Compass was likely to succeed on some of its claims. The Court need not repeat that analysis here. Even assuming Blue Compass is still likely to succeed on the merits, it has failed to meet its burden on the remaining *Winter* factors. *See Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc.*, 762 F.2d 1374, 1378 (9th Cir. 1985) (holding that when a movant fails to demonstrate a “significant threat of irreparable injury . . . [courts] need not decide whether [movants] will eventually prevail in [their] claims”); *see also Goldwater Bank NA v. Caliber Home Loans Inc.*, 2021 WL 4593075, at *6 (D. Ariz. 2021) (“Because [Plaintiff] has failed to show likely irreparable harm, the Court need not address whether it is likely to succeed on the merits.”).

2. Irreparable Harm

“[E]conomic harm is not generally considered irreparable.” *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 677 (9th Cir. 2021). “The threat of being driven out of business,” however, “is enough to establish irreparable harm, even when damages may be available and the amount of direct financial harm is ascertainable.” *hiQLabs, Inc. v. LinkedIn Corp.*, 31 F.4th 1180, 1188 (9th Cir. 2021) (cleaned up). Blue Compass does not argue that it faces the “threat of being driven out of business.” (*See generally* Docs. 70, 89.) Nor does it present any evidence that the survival of any of its business—whether nationally, or locally—is threatened by McFadden and Camper Capital. (*See id.*)

Rather, Blue Compass relies on “intangible harms” such as damage to “Blue Compass’s reputation, future business expectancy, goodwill, and competitive position in the marketplace” and asserts that it will suffer irreparable harm because its damages are difficult to calculate. (Doc. 89 at 5–6.) Such harms may be grounds for a preliminary injunction. *See adidas Am., Inc. v. Skechers USA, Inc.*, 890 F.3d 747, 756 (9th Cir. 2018) (“Evidence of loss of control over business reputation and damage to goodwill can constitute irreparable harm.” (cleaned up)) and *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946, 1003 (9th Cir. 2023) (a finding of irreparable injury is appropriate “where the

1 underlying injury does not readily lend itself to calculable money damages”). But, as
2 before, Blue Compass fails to present “specific evidence that its reputation and goodwill
3 [are] likely to be irreparably harmed.” (Doc. 22 at 11.)

4 To support its claim that it has now marshalled specific evidence of irreparable
5 harm, Blue Compass points to LeDuc and McFadden’s deposition testimony. Blue
6 Compass identifies the following testimony as demonstrating irreparable harm: (1) LeDuc’s
7 testimony that “Camper Capitol’s earliest commercial accounts—MHQ, Blue Sky Pest
8 Control, Simply Green, Metro Fire, and Van Chevrolet—were contacts [LeDuc] developed
9 while serving as Blue Compass’s General Sales Manager and that Camper Capital
10 continues to do business with them,”; (2) McFadden’s testimony that he purchased Google
11 keywords like “Camperland” and “truck shells” to direct internet traffic to Camper
12 Capital’s website; and (3) McFadden’s testimony that ““the Southwest market . . . was the
13 only market that sold camper shells”” during his time at Blue Compass, and that Camper
14 Capital’s Phoenix/Peoria locations were within 100-miles of “overlapping” Blue Compass
15 stores. (Doc. 70 at 17–18.)⁴

16 While this testimony may bolster Blue Compass’s claim that McFadden breached
17 his contract and thus may bear on Blue Compass’s likelihood of success on the merits, it
18 does little to establish that Blue Compass was or will be harmed by the breach—let alone
19 irreparably so. As an initial matter, Blue Compass only seeks an injunction against
20 McFadden, not LeDuc or Camper Capital. (Doc. 70 at 2.) Whether LeDuc is soliciting
21 Blue Compass customers is therefore irrelevant to the present motion. Even if the Court
22 were to grant the requested relief, it would have no effect on LeDuc or Camper Capital. It
23 is thus unclear how the relief Blue Compass requests will remedy the harm they allege.

24 Further, Blue Compass does not explain how Camper Capital’s purchase of Google
25 keywords has had, or is likely to have, an impact on its goodwill, reputation, or customer

26 ⁴ Blue Compass also argues that it faces “an ongoing loss of trade-secret secrecy and
27 control of confidential financials.” (Doc. 70 at 18.) But it fails to identify any new
28 evidence not before the Court in its previous application for preliminary relief that would
support this theory. It thus continues to lack the specific evidence required to support
preliminary relief.

1 base; nor does it explain how enjoining McFadden will prevent LeDuc and Camper Capital
2 from continuing to use the same keywords. *See Realty Executives International, Inc. v.*
3 *RE/EX California, Inc.*, 2009 WL 10673968, at *2 (D. Ariz. 2009) (denying injunctive
4 relief where defendant did not “explain how [it was] losing good will among consumers as
5 a result of the parties’ agreement being terminated”). And finally, that McFadden is aware
6 Camper Capital is competing with Blue Compass in the Southwest region is (1) not new
7 evidence (*See* Doc. 22 at 9 (“It is undisputed that Blue Compass and Camper Capital are
8 both in the camper shell business.”)); and (2) does not demonstrate that Blue Compass’s
9 goodwill is threatened by Camper Capital’s business.

10 Blue Compass’s only argument is a conclusory one: that “the impact of Blue
11 Compass’s loss of goodwill—reduced pricing power, diluted brand recognition, and
12 permanent disruption to Blue Compass’s customer accounts—cannot be measured through
13 sales data.” (Doc. 70 at 18.) And yet, as discussed, there is no evidence in the record that
14 Blue Compass’s pricing power has been or will be reduced, its brand recognition diluted,
15 or its customer accounts disrupted. *Cf. adidas*, 890 F.3d at 756–57 (affirming district
16 court’s finding of irreparable harm where plaintiff submitted extensive testimony and
17 evidence, including customer surveys, that it had cultivated a “specific reputation” and that
18 a competing product was confusing consumers).

19 Finally, Blue Compass cannot rely on the difficulty of calculating damages for
20 intangible injuries to cure its failure to demonstrate that it has, in fact, suffered intangible
21 injuries. (*See e.g.*, Doc. 70 at 18.) It is true that when the “underlying injury does not
22 readily lend itself to calculable money damages” injunctive relief may be appropriate, *Epic*
23 *Games*, 67 F.4th at 1003, but to take advantage of incalculable damages, Blue Compass
24 must show that it will suffer an underlying injury. *See Rent-A-Center, Inc. v. Canyon*
25 *Television and Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991) (affirming district
26 court’s finding of irreparable harm where the plaintiff demonstrated harm to “advertising
27 efforts and goodwill” and “damages would be difficult to value”). It has failed to do so,
28 and a preliminary injunction is therefore improper.

